HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's Order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 238/2003(S/B)

Kishore Chand Pandey

Vs.

State Jal Sansthan Doon and others.

Approved for reporting

~~Not approved for reporting~~

Date of Decision 24.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 238 (S/B) OF 2003

(Urgency Application No. 1487 of 2006)

Sri Kishore Chandra Pandey
S/o Late Sri Leela Dhar Pandey
R/o Vill. Ghorsa, P.O.- Amritpur,
Tehsil-Dhar, District- Nainital.

.....Petitioner.

Versus

1. Uttaranchal Jal Sansthan through its Chief General Manager, Dehradun.
2. Uttaranchal Jal Sansthan through General Manger (Kumaon Division), Nainital.
3. Executive Engineer, Uttaranchal Jal Sansthan (Kumaon Division), Nainital.

.....Respondents

24.02.2006

Sri Tanveer Alam Khan, learned counsel for the petitioner.
Learned standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Tanveer Alam, Learned Counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the government order dated 28.05.2002 annexed as annexure No.3A to the writ petition as well as the order dated 06.12.1999 passed by the respondents and further has prayed for considering the appointment under the provisions of U.P. Government Servant Dying in Harness Rules 1974 on compassionate ground.

Briefly stated the father of the petitioner Late Sri Leeladhar Pandey was appointed as daily wage/work charge employee in the year 1989 under the control of the respondent No.3. The father of the petitioner filed a writ petition No. 261 (S/S) of 2001 before Uttaranchal High Court at Nainital for his regularization, the same is still pending before this Hon'ble Court. After the death

of the petitioner's father, he applied for the appointment under Dying in Harness Rules. The petitioner has again represented to the respondent no.2 for his appointment on 23.01.2003. The authority concerned has rejected the same in view of the Government Order dated 28.05.2002.

Standing Counsel has filed the Counter affidavit and has relied upon the Government Order dated 28.05.2002 bearing No.72(1)/9-2-(6 adhi/2002) by means of which the dependent of daily wage employee is not entitled for the benefit under Dying in Harness Rule.

Counsel for the petitioner has relied upon the observations in the case of Santosh Kumar Mishra Vs. State of U.P. (2002) 1 U.P.L.B.E.C. pg.337 as well as the decision in the case of Smt. Laxmi Devi Vs. State of Uttaranchal & others to the following effect:-

Admittedly, the husband of the petitioner has worked for more than 12 years. This fact has not been denied in the counter affidavit. The deceased was appointed on 1st August, 1989 and continued to serve until his death i.e. on 25th April, 2002 and during this period there is no dispute from either side that he continued to work and there was no break in his service.

"Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government Servant in view of the fact that his appointment has been covered into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp

Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate ground under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U.P. and others, reported in 1999(3) ESC 2187 (All):1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the Learned Sate Counsel despite being specifically asked for.

It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy.

It is also note disputed that appointments of such nature have already been given by the department earlier and the respondents State has not been able to indicate as to why the same benefit has not given to the petitioner."

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others****, similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-*

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependents of Government Servants Rule 1974 within a period of six weeks from the date of production of certified copy of this order."

In ***Anju Misra v. General Manager, Kanpur Jal Sansthan, Kanpur 2004 (1) Page 201*** *after relying upon the judgment in* ***Santosh Kumar Misra v. State of U.P. and others 2002 (1) UPLBEC, 237,*** *it has been held as under:-*

"9. According to the submission of the learned Counsel for the State, a daily wager or work charge employee who is engaged by the State Government or any department of the State Government cannot be treated as a Government Servant within

the definition of Rule 2 of the aforesaid rules. Qualifying the above argument, the learned Counsel for the State further submitted that though an employee who is not regularly appointed is covered by the definition in view of sub-clause (iii) of Rule 2(a) but in that case such employee must have put in three years continuous service, that too in regular vacancy in such employment. Since, the petitioner's father was earlier a daily wager or muster roll employee and later on worked as work charge employee, therefore, it cannot be said that he was appointed regularly or had worked in regular vacancy."

"14. The practice of appointing daily wagers or work charge employees is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or work charge employees in the Government Department have been allowed to continue for years together, namely, 15 years, 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government Servant but, they are disposed with their engagement or attaining the age of superannuating. The practice of appointing such daily wagers and work charge employees has constantly been a matter of great concern for the judiciary and for that matter, the Apex Court has many a times issued directions for framing schemes so as to accommodate all daily wagers of long standing duration and work-charge employees as a regular employees. It would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many other department."

In ***Meean Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2002) 2 UPLBEC 1421,*** *it has been held as under:-*

"A woman cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis in view of Meena Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2000) 2 PULBEC 1421 at 1422 (All)."

Further in view of the judgment of the Apex Court in the case of ***Pushpa Lata Dixit vs. Madhyamik Shiksha Parishad and others 1991 (18) ALR 509 and Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976****, so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.*

Similarly in the case of ***State of Manipur Vs. Thingujam Brojen (1996) 9 SCC Page 29, further in Smt. Saroj Devi Vs. State of U.P. 1999 (3) Educational and Service Cases Page 215****, the benefit has also been extended to the temporary employees.*

So far as the contention of the petitioner for absorbing under the Government Servant Dying in Harness rules, 1974 is concerned, the petitioner has already stated that she has already been engaged in daily wage basis since 2004 and therefore, grievance of the petitioner regarding the absorption under the Dying in Harness Rules are not more available to her."

As will appear from the aforesaid decisions that the appointment on compassionate ground should not be delayed as it being not a recruitment but its object is to help the deceased family from starvation and further to save from the hardship caused to the family after the death of the bread earner and therefore the Government order dated 28.05.2002 being contrary of the rule can not be allowed.

In view of the aforesaid facts and circumstances, a writ of certiorari is issued quashing the order dated 06.12.1999.

Further a writ of mandamus is issued directing the respondents to consider the claim of the petitioner for providing the appointment under the Provisions of U.P. Government Servant Dying in Harness Rules, 1974 on compassionate ground within a period of 6 weeks in accordance with law.

Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

24.02.2006
Jain